

Notice of Allowability

Application No.	Applicant(s)	
10/070,515	LLOYD ET AL.	
Examiner	Art Unit	
CHUONG T. HO	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1. This communication is responsive to 05/11/07.
- 2. The allowed claim(s) is/are 1-79, 116-118 renumbered 1-82 respectively.
- 3. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of the:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 4. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 - 5. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
- 6. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- 1. Notice of References Cited (PTO-892)
- 2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3. Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 1,2,3
- 4. Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5. Notice of Informal Patent Application
- 6. Interview Summary (PTO-413),
Paper No./Mail Date _____.
- 7. Examiner's Amendment/Comment
- 8. Examiner's Statement of Reasons for Allowance
- 9. Other _____.

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1. The amendment after final rejection filed 05/11/07 have been entered and made of record.
2. Claims 1-79, 116-118 are pending.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 03/26/07, 04/23/07, 06/07/07 was filed after the mailing date of the non-final on 02/28/07. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Thomas B. Haverstock on August 1, 2007.

4. The application has been amended as follows:

IN THE CLAIMS

CLAIM 1, Line 9, replace "including one or more of:" by - - - including: ----;

CLAIM 75, Line 8, replace "including one or more of:" by - - - including: ----;

CLAIM 76, Line 11, replace "including one or more of:" by - - - including: ----;

CLAIM 78, Line 11, replace "including one or more of:" by - - - including: ----;

CANCELED CLAIMS 80-115

Allowable Subject Matter

5. Claims 1-79, 116-118 are allowed.

6. The following is an examiner's statement of reasons for allowance: the prior art (6389751, 2005/0201302) of record does not appear to teach or render obvious the claimed limitations in combinations with the specific added limitations, as recited from independent claims 1, 76: the measuring performance characteristics including: launching a first plurality of one or more packets, and measuring the first plurality of one or more packets; measuring a second plurality of one or more packets in the internetwork, wherein the second plurality of one or more packets were already launched; monitoring a first plurality of one or more flows in the internetwork, duplicating one or more packets from the plurality of one or more flows, and measuring the one or more duplicated packets; serving as a proxy hop for a second plurality of one or more flows, and measuring the second plurality of one or more flows; and encoding material within a third plurality of one or more flows, causing a fourth plurality of one or more flows to be generated, wherein the third plurality of one or more flows traverses a first path of the internetwork, and the fourth plurality of one or more flows traverses a second path of the internetwork, wherein at least a portion of the first path of the internetwork and at least a portion of the second path of the internetwork are equal, and measuring a subset of the fourth plurality of one or more flows; calculating at least one performance metric for the subset of flows in the at least a portion of the internetwork, the at least one performance metric at least partly determined from the measured performance characteristics; and in response to calculating the at least one performance metric,

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rearchitecting the internetwork to optimize one or more of the least one performance metric using peer-to-peer communication, rearchitecting the internetwork including at least one of; altering a plurality of one or more routing tables in the internetwork, wherein the plurality of one or more routing tables include at least one of: network-layer routing tables, layer 3 routing tables, IP routing tables, layer 2 forwarding tables, and MPLS forwarding tables; redirecting the subset of flows to a second internetwork coupled to the internetwork at one or more Points of Presence; and affecting forwarding decisions of the subset of flows, by imposing one or more of: NAT, GRE, and tunneling techniques other than GRE”.

The following is an examiner’s statement of reasons for allowance: the prior art (6389751, 2005/0201302) of record does not appear to teach or render obvious the claimed limitations in combinations with the specific added limitations, as recited from independent claims 75, 78: the measuring performance characteristics including: measuring a second plurality of one or more packets in the internetwork, wherein the second plurality of one or more packets were already launched; monitoring a first plurality of one or more flows in the internetwork, duplicating one or more packets from the plurality of one or more flows, and measuring the one or more duplicated packets; serving as a proxy hop for a second plurality of one or more flows, and measuring the second plurality of one or more flows; and encoding material within a third plurality of one or more flows, causing a fourth plurality of one or more flows to be generated, wherein the third plurality of one or more flows traverses a first path of the internetwork, and the fourth plurality of one or more flows traverses a second path of the internetwork,

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wherein at least a portion of the first path of the internetwork and at least a portion of the second path of the internetwork are equal, and measuring a subset of the fourth plurality of one or more flows; calculating at least one performance metric for the subset of flows in the at least a portion of the internetwork, the at least one performance metric at least partly determined from the measured performance characteristics; and in response to calculating the at least one performance metric, affecting the routing of the subset of flows by altering a plurality of one or more DNS entries in the internetwork”.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUONG T. HO whose telephone number is (571) 272-3133. The examiner can normally be reached on 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ORGAD EDAN can be reached on (571) 272-7884. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

08/02/07

EDAN ORGAD
PRIMARY PATENT EXAMINER

Edan Orgad 8/6/07